



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

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**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 26, 2022

IN THE MATTER OF:

Appeal Board No. 622197

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 12, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance on behalf of the claimant. By decision filed March 17, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for the employer, a food and beverage service company, as a full-time director of analytics. The claimant's duties included overseeing a staff of seven employee and prepare operational reports the company.

On June 15, 2021, the claimant was placed on a performance improvement plan for 90 days. The performance improvement plan indicated that if satisfactory improvement is not demonstrated, the claimant's employment would be terminated. In the first week of July 2021, the claimant met with his manager

to discuss the improvement plan with him. The manager told the claimant that his job performance had been satisfactory over the past few weeks. In the first week of August 2021, the claimant had a meeting with the manager and a human resource representative. This time, the claimant was told that his job performance was unsatisfactory and there was a lack of progress. On the same day, the claimant met with his manager in a separate meeting. In the meeting, the manager told the claimant that he was not going to successfully complete the performance improvement program and he should start looking for another job right away.

On August 2, 2021, the claimant received an offer of employment for another company. The offer included the location, salary, and duties, but was contingent upon him passing a background check, including a criminal record check and a drug screening. The claimant was not given a start date for the new employment.

On August 3, 2021, the claimant told the employer that he received another job offer, which was conditioned on him passing a background check. He told his manager that he would resign when he passed the background check. The manager congratulated him and told him that he had a list of items for the claimant to complete and turn over.

On or about August 11, 2021, after the claimant had turned over the items that the manager requested, the manager told him to resign since he was not doing anything at that point. The claimant did not want to resign and asked his manager to wait until he passed the background check. The claimant submitted a letter of resignation to the employer, indicating that his resignation would be effective August 12, 2021. In October 2021, the claimant's job offer was rescinded because he did not pass the background check.

**OPINION:** The credible evidence establishes that the claimant did not voluntarily quit his employment. Although the claimant informed his supervisor that he received an offer employment, he specified that the offer was contingent on passing a background check and that he would not be resigning until he passed the background check. Rather than permitting the claimant to continue working, the employer asked the claimant to turn over items and, once that was done, told the claimant to submit his resignation. This case is similar to Appeal Board No. 585941. In that case, the assistant director of human resources told the claimant that the purpose of the meeting was to accept her resignation and, even though the claimant stated she did not want

to resign, the assistant director handed her a resignation form. Like the claimant in that case, the claimant in this case had never offered his resignation, but rather expressed an intention to resign at some unspecified time in the future, after he had passed the background check and received a definite offer. Since the manager told him that he was not going to make it through the performance improvement program successfully, advised him to start looking for a job right away, and later told the claimant to resign, the claimant reasonably believed he was being forced to resign. Under these circumstances, his resignation was not voluntary, but at the insistence of the employer. Accordingly, we conclude that the claimant did not voluntarily separate from his employment and his employment ended under nondisqualifying conditions.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 12, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER